IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23045 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARSAD ALIAS ASHOK KUBERBHAI SOLANKI
Versus
STATE OF GUJARAT & 2

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Appearance :
MS SUBHADRA G PATEL for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mr. N.D. Gohil, ASSTT. GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 13/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner – detenu has challenged his detention order dated 09-11-05 by which he is detained under the Gujarat Prevention of

Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention, there is a reference to a solitary case pending against the petitioner under the Bombay Prohibition Act.

Learned advocate for the petitioner submitted that except a solitary criminal case, there is not even a statement of any independent witness for coming to the conclusion that the activities of the petitioner is prejudicial to public order or even tempo of public is disturbed by the said activities. It is submitted that at the most it can be said that the petitioner has violated law and order, and it cannot be said that there is any breach of public order. Learned advocate further submitted that the petitioner was already arrested and was granted remand. The authority has not stated as to on what material he has come to a conclusion that on presentation of application for bail, the detenu may be released on bail. No particulars in this behalf are given in the grounds of detention.

It is not in dispute that except a solitary criminal cases, there is neither any statement of any witnesses nor any documents on the record to suggest that the activities of the petitioner prejudicially affect public health or that by the said activities, the even tempo of public is disturbed. The offence registered against the petitioner is under the Bombay Prohibition Act. In that view of the matter, at the most it can be said that the petitioner has violated

law and order, and not public order. Moreover, there is nothing on the record to suggest as to on what basis the detaining authority has come to a conclusion that the petitioner is likely to be granted bail on presentation of the bail application.

In the result, the petition is allowed. Order of detention passed against the petitioner dated 09.11.2005 is quashed and set aside. The petitioner detenu is ordered to be released forthwith unless he is required in connection with any other case. Rule is made absolute, with no order as to costs.

[P. B. MAJMUDAR, J.]

mathew